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THE TRANSFER OF PROPERTY ACT AMENDING BILL—III*.

Clause (53) of the Bill provides for service of the "notice to quit" on the tenant by post also. This is in accordance with the decisions. Under S. 27 of the General Clauses Act such service will be deemed to be sufficient if it is by registered post pre-paid and it will be presumed unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post. The only difficulty that may arise as regards the actual date of service is where the tenant deliberately postpones taking delivery of the registered letter. Even in such cases it should be provided that the letter must be deemed to be served at the earliest time when the letter would have been delivered in the usual course of post. It is desirable to make the point clear expressly as the validity of the notice is dependent on the time given.

Clause (54) provides for compulsory registration of all leases except leases from month to month or for any term not exceeding one month. It also provides that an instrument of lease should be executed by both, lessor and lessee. The power of the Local Government to exempt particular leases from compulsory registration is however preserved. We do not think that it is necessary to make any changes in the old section 107. The clause providing for compulsory registration even in the cases of leases for less than a year is an unnecessary hardship especially in the case of leases of dwelling-houses in towns, which form a large class of such transactions. Again there is no case made out for insisting on the execution of the lease by both, lessor and lessee. In this part of India at any rate the general practice is only to have a rent deed executed by the lessee, the

*The First and Second Article on the Bills appeared in 54 M.L.J. 93 (Journal) and 55 M.L.J. 33 (Journal).

same being delivered to and accepted by the lessor. The Full Bench decision in *Syed Ajam Sahib* v. *Ananthanarayana Aiyar*[1] is sufficient authority to justify the validity of such a lease. There is no necessity to modify an existing usage which has not been found to involve any particular hardship. Even if the changes proposed should be accepted, we do not see why the rest of the old section 107 should be altered. The clause about the other kinds of lease of immoveable property should be retained as the first portion of the proposed new section still provides for some exceptions.

Clause (55) of the Bill deals with the right of a tenant to remove all things which he has attached to the earth. The Indian Law has in this instance differed considerably from the English Law. The general maxim of the English Common Law *Quicquid plantatur solo cedit* has had from the beginning only a limited application in India. The rules of Hindu and Mahomedan Law on the point are more liberal to the tenants and other persons who have made improvements, etc., on the lands of others. The Transfer of Property Act, section 108, clause (*h*) has simplified the rules and abolished the distinctions of English Law as regards what are fixtures and what are not and the differences in rights according as the tenancy was for trade purposes or agricultural purposes and so forth. The new clause proposes to permit the tenant to remove the fixtures so long as he is in possession and not afterwards even after the determination of the lease. It does not seem to be a satisfactory solution to confine the rights of the tenant only to the period of his actual possession. Even under the existing law as settled by the decision of the Privy Council in *Narayan Das Khettry* v. *Jatindra Nath Roy Chowdhury,*[2] the tenant will be entitled to a reasonable time for such removal even after the termination of the lease. The proposed alteration would in some cases operate to deprive the tenant of his undoubted right to remove the fixtures even during the continuance of the lease as for instance where during the term of the lease the lands are acquired by the Government under the Land Acquisition Act and possession is taken by the authorities in pursuance of the statutory notification. We would therefore suggest that the new section should run as follows: "The lessee may remove, at any time during the continuance of the lease, and until the lapse of a reasonable time even after the determination of the lease, all

1. (1910) I.L.R. 35 M 95: 21 M.L.J. 202 (F.B.).
2. (1927) L.R 54 I.A. 218 : I.L.R. 54 C. 669 : 53 M. L. J. 158 (P.C.).

things which he has attached to the earth provided he leaves the property in the state in which he received it."

The draft bill does not deal with another question which is equally important, viz., the right to compensation where the fixtures are not removed. On this point there has been a difference of view—see the judgment in *Angammal* v. *Aslami Sahib.*[3] No doubt the recent decision of the Privy Council referred to above has decided that if the tenant does not remove the fixtures he will lose them. It is permissible to point that there is no legal basis for this view. There is no reason why the ownership of the tenant should be forfeited by his non-removal. The usage in this part of India has always been to recognise the right to compensation. Advantage should be taken of the present occasion to enact a clause in favour of the tenant's right to get compensation in proper cases.

The other proposed alteration in clause (*o*) of S. 108 is unexceptionable and may be accepted.

Clause (56) of the Bill proposes to amend S. 111, cl. (9) relating to determination of a lease by forfeiture. There is no reason why the words "or the lease shall become void" should be omitted. This is merely another way of stating that the lessor may re-enter on breach of an express condition. The decision in *Nil Madhab Sikdar* v. *Narattam Sikdhar*[4] related to a lease where the only provision was that a transfer by the lessee was void and not that the lease was to be void on a transfer by the lessee. The proposed sub-clause (1) of cl. (56) is unnecessary. If the said words are allowed to remain as they are, it is difficult to see why a condition in a lease which determines the same on the insolvency of the lessee (which condition is admittedly valid and operative by virtue of the proviso to S. 12 of the main Act) is not sufficient to have the effect of a forfeiture under S. 111, clause (*g*) even as it now stands. It does not seem to be correct to assume that a forfeiture of a lease requires an express clause of re-entry and that more general words determining the lease or words to the effect that the lease shall become void are insufficient for the purpose. We would therefore omit the proposed sub-clauses (2) and (3) of the new clause (56) as wholly unnecessary.

The sub-clause (*d*) which provides that there must be an act of the lessor evidencing his intention to determine the lease other than the institution of the legal proceedings to enforce

3. (1913) I. L. R. 38 M. 710 : 25 M. L. J. 625.
4. (1890) I.L.R. 17 C. 826.

forfeiture may be accepted as a desirable amendment. This will settle the conflict of views on the point.

Clause (57) of the Bill provides for a new section providing for relief against forfeiture of a lease in certain cases in addition to the existing provision of S. 114 which applies only to cases of forfeiture for non-payment of rent. We agree that the courts should have the power to give relief against forfeiture in cases of other breaches of covenant as well. The proposed section 114-A is however incomplete. Nor is there any necessity to make an exception in the cases mentioned in the proviso. We would prefer to give a discretion to the Court to relieve against forfeiture in all cases. We would suggest the following clause instead:—"Where a lease of immoveable property is otherwise determined by forfeiture and the lessor sues to eject the lessee the Court may, on application by the lessee, permit him to remedy the breach which occasioned the forfeiture within such time and on such terms as the Court may consider just; and if the lessee carries out the directions of the Court, the Court may in lieu of making a decree for ejectment pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred."

Clause (58) recasts the language of section 119 of the Act so as to make it clear that the benefit of the section can be availed of by the transferees from the original parties to the exchange. This is a reasonable amendment which should be accepted.

Clause (59) provides for the addition of the words "and liabilities of" in section 128 so as to make a universal donee liable not only for the debts of the donor but also for other kinds of liabilities due by him. This again is unobjectionable.

Clause (60) may also be accepted as there is nothing contrary to the rules of Hindu Law in Chapter VI of the Act.

Clause (61) proposes to omit the words introduced in S. 130 by Act XXXVIII of 1925, and insert the words "whether with or without consideration" after the words "The transfer of an actionable claim." We agree with the alterations proposed.

S. P. SASTRI.

THE TRANSFER OF PROPERTY ACT AMENDMENT (SUPPLEMENTARY) BILL.

L. A. BILL No. 34 OF 1927.

Clause (2) of the Bill amends S. 8 of The Married Woman's Property Act, 1874 by adding a new clause in the proviso to the effect that property settled on a married woman subject to restraint on anticipation cannot be proceeded against in execution by a creditor. This is to settle the conflict between the High Courts as to whether S. 8 of the Act prevails over the provisions of S. 10 of the Transfer of Property Act. We agree with the amendment which prefers the Madras and Bomaby view to that of Calcutta.

Clause (3) of the Bill introduces a new section in the Specific Relief Act to further carry out the statutory provisions now sought to be inserted in the Transfer of Property Act with regard to the doctrine of 'Part Performance.' We have already commented on the same with reference to the clause in the other Bill. In addition to the points referred to therein it should be borne in mind that the section as drafted here with reference to contracts to lease seems to apply only to written documents signed by the parties. In commenting on the changes proposed to be introduced in section 107 of the Transfer of Property Act it has been pointed out that it is not necessary to interfere with the settled view of the Madras Court that leases can be created by a document signed by the lessee only and accepted by the lessor. This aspect of the matter will have to be remembered in connection with the proposed section. If it is decided to give statutory effect to the doctrine of part-performance on the lines suggested by the Bill, the better way of doing it in the case under discussion is to omit the proposed section altogether and alter the definition of the word 'lease' in the Registration Act so as to make "an agreement to lease" free from compulsory registration. This will make the case of agreements to lease analogous to the cases of agreement to sell and the new clause (2) of the present Bill will be unnecessary.

Clauses (4) to (8) of the Bill seek to amend the provisions of O. 34 of the Civil Procedure Code in several particulars so as to make them clearer. We agree that, generally the amendments that are sought to be introduced are a distinct improvement and should be accepted. The language is made more precise and several lacuna are filled up. The provisions as to

the account that has to be taken are set out in great detail and may be accepted. We would however suggest the following for further consideration:

(1) In sub-clause (2) of Rule 2 as now proposed, it should be made clear that extension of time can be granted even after an application is made by the plaintiff under sub-rule (2) of sub-clause (1) for a final decree debarring the defendant from all right to redeem. It may also be expressly provided in the rule that the application can be made even after the expiry of the original period although the decisions take the same view even on the present language.

(2) The clauses providing for extension of time by the Court are now transferred to Rule 2 and Rule 7 of O. 34. This has been overlooked by the draft bill in not providing for consequential changes in O. 43, R. 1 (*o*) of the Civil Procedure Code which provides for an appeal against an order refusing to extend the time for the payment of the mortgage money. Sub-clause (*o*) of O. 43, R. 1 should be altered accordingly as follows: "An order under sub-clause (2) of Rule 2 and sub-clause (2) of Rule 7 of O. 34 refusing to extend the time for payment." The words "of the mortgage-money" in the old clause (*o*) should be omitted as the new amendments now provide for payment of other expenses and costs also.

(3) There is now a divergence of views on the question as to the effect of a partial payment or adjustment made outside Court. The question has arisen whether the final decree should ignore such matters and whether it is competent to the Court to take into consideration any payments made after the preliminary decree outside Court. The specific introduction of the word 'preliminary' in the rules in speaking of the preliminary decrees directing accounts, etc., will clearly operate to exclude the applicability of O. 21, R. 2 to such cases as the payment is not in execution proceedings. It is therefore desirable to consider the question whether the words 'into Court' should be retained in the various rules. One advantage in retaining them will be to ensure that there is no dispute as to alleged payments. On the other hand the extra cost and the obligation to give security in the case of minor decree-holders may operate as a hardship. Even in the case of suits by a father or managing member of the Hindu joint family where the minor members are parties *ex facie* some Courts have taken the view that security must be furnished before the amounts are drawn. It is a question of

policy as to which view should prevail. We do not see why mortgage decrees should involve additional liability than simple money decrees. We would therefore suggest that suitable amendments must be made to empower Courts to investigate such cases of alleged payments made outside Court and to give relief.

(4) The words "or at any time before the confirmation of a sale made in pursuance of a final decree" in the proposed new Rules 5 and 7 are ambiguous as it may be construed to narrow down the right of redemption only up to the confirmation of the first sale though only of some of the hypothecated items which may realise only a portion of the decree amount. For the sake of convenience and other reasons, it may be the case that sales of the mortgaged property take place at different times. The right of the mortgagor to make the payment of the balance due after partial satisfaction by sale of some items alone, and to get an order of redemption should be made clear. Under the Full Bench ruling of the Madras High Court in *Mallikarjunadu Setti* v. *Lingamurti Pantulu*[1] the provisions of O. 21, Rr. 89 and 90 will apply to sales in execution of mortgage decrees also. The only additional privilege now sought to be conferred is to get a final decree for reconveyance, etc.

(5) The new Rr. 6 and 8-A substitute the words "if the balance is otherwise legally recoverable from the defendant personally" for the words "if the balance is otherwise legally recoverable from the defendant otherwise than out of the property sold." No reasons are given for the proposed change. It is not in all cases that the defendant is liable personally. In the case of minor members of Hindu joint families and such adult members as do not join in the mortgage deed executed by a managing member the other defendants will be liable for the deficiency of the sale proceeds out of other joint family properties. The same is the case with respect to the sons of a Hindu father where the mortgage is not for illegal or immoral purposes. In the case where the original executant is dead and the defendants are his legal representatives the balance is recoverable from the estate only. Substitution of the word 'personally' is therefore one which should be rejected.

(6) In Rules 7 and 8 it should be made clear that even in a suit for redemption it is open to the plaintiff-mortgagor

1. (1902) I.L.R. 25 M. 244: 12 M.L.J. 279 (F.B.).

also to apply for sale if he is unable to pay the amount into Court. The right to apply for sale is in terms given only to the defendant. The decision in *Govinda Taragan* v. *Veeran*[2] discusses the law on the point. The amendments now proposed in the corresponding rules may make it difficult to establish the mortgagor's right to apply for sale. It is therefore necessary to expressly provide, as S. 85 of the Conveyancing Act, 1881, does in England, that even a mortgagor can in an action for redemption ask for sale. Rules 7 and 8 should be altered suitably for that purpose.

(7) As regards the new Rule 11 dealing with the question of interest, instead of the words "the Court may order interest" the words "interest shall be payable" should be substituted as it may otherwise be contended that the Court has a discretion in the matter and is not bound to allow interest. The words "save as otherwise provided by any law for the time being" may be inserted in the beginning of the section so as to make it clear that this section is subject to the provisions of the Usurious Loans Act and S. 74 of the Contract Act.

(8) Rule 13 of O. 34, Civil Procedure Code, is left unamended. We would suggest that the words 'such proceeds' in the rule be deleted and the words "the proceeds of a sale directed under this order" be substituted. Again the order of appropriation laid down in the rule sometimes works a hardship as, for instance, in the decision in *Sabapathi Pillai* v. *Chockalinga Pillai*.[3] The words "and of the costs of the suit in which the decree directing the sale was made" should be omitted from the clause "thirdly, etc." They should be added as a fifth clause.

Clause (9) deals with the amendments to the Indian Registration Act, 1908.

Clause (*a*) of the new rule will be unnecessary if S. 107 of the Transfer of Property Act is not amended as suggested by us in dealing with that question.

Sub-clause (*b*) proposes to add a new clause enlarging the list of compulsorily registrable documents. We are not satisfied that assignments of decrees of Courts should be compulsorily registered where immoveable properties are dealt with.

2. (1911) I.L.R. 36 M. 32: 21 M.L.J. 941.
3. (1913) 25 M.L.J. 552.

The alteration suggested in sub-section (2), sub-clause (*vi*) may be accepted.

The proposed amendments relating to S. 48 of the Indian Registration Act are unobjectionable and may be accepted.

The proviso sought to be added in S. 49 of the Registration Act is again necessary if the doctrine of part-performance is to be statutorily recognised as provided in the Bill. In view of S. 4 of the Transfer of Property Act which makes the registration sections supplemental to the Registration Act the words "or the Transfer of Property Act, 1882" in the proviso as drafted may be omitted.

Clause (10) of the Bill deals with the amendments proposed to the Indian Succession Act, 1925, so as to bring it into conformity with the provisions of the Transfer of Property Act, Ss. 15 and 18. We have commented on the same in connection with the corresponding clauses in the main bill and the same remarks will apply even here. Incidentally this will also remove the somewhat anomalous position created by the previous legislation which while removing the incapacity of an unborn Hindu child being a donee or legatee did not make consequential amendments in the corresponding provisions of the Succession Act.

Clause (62) of the main bill and clause (11) of this supplementary bill deal with the question of retrospective effect of the new amendments. These clauses should be carefully considered, as the amendments proposed are of different kinds. Some are merely declaratory, some propose new changes in the substantive law, some have obviously retrospective effect being merely an authoritative settling of conflict of views and some are statutory provisions intended to embody existing law. We do not go into the matter at this stage as the various clauses of the bill may have to undergo further alterations in the light of public opinion and discussion in the legislatures.

S. P. SASTRI.

[END OF VOLUME LV.]

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put me to loss"; not merely "so as to put me to loss." And as a sapinda it is his duty to consider the lady's motive.

(3) "For the selfish gain of all of you." It does not lie in the defendants' mouths to complain that this should be more specific. They had carefully concealed from the plaintiff the arrangement to which they had come, and it was only, thanks to his Dewan (who died before the trial, page 760) that he knew as much as he did. Now that the arrangement has come to light the objection is fully justified.

(4) "You have intrigued with my long-standing enemy and arranged to adopt his son."

This may not be a fatal objection in law; but it cannot be said on the other hand that it was a consideration to which the plaintiff was bound to shut his eyes. Assuming as the plaintiff naturally assumed, and the 1st defendant had certainly accepted till January 1914, that he was the rightful son of the late Maharaja, it was very undesirable to have as owner of the important offshoot of the Zamindary, Gollaprole estate, a man who denied the legitimacy of the chief branch. It meant, to put it no higher, very great unpleasantness in the family.

Nor did the plaintiff make this a ground for vetoing an adoption altogether; he had been open to having a friendly discussion (para. 3) and probably even then would have been ready to discuss the matter with 1st defendant. It is argued that his prejudice was such that under no circumstances would he ever have consented. This is the region of hypothesis; but suppose the 1st and 2nd defendants had come to him and assured him that they fully recognized his birthright, and at the same time had allayed his reasonable suspicion of corruption, it is quite likely that he would have consented. Para. 4 correctly though roughly states the circumstances which led up to the adoption, and complains that the letter for permission was sent merely as a formality and not with an honest desire to obtain the plaintiff's consent.

That is true; but is not in my opinion a valid point of law. So long as defendant had asked plaintiff's consent we are not concerned with her *animus* in doing so.

That the adoption was barred by previous contract with the widow's husband may not have been a good legal point; but his thinking that it was certainly does not vitiate the whole of the plaintiff's refusal.

I consider this letter to be a valid refusal of consent on valid ground.

I do not consider it necessary to plaintiff's case to invalidate the consent given by the other sapinda, the 2nd defendant's father.

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But I find that he colluded with the 1st defendant and her brother D.W. 27 in order to alienate half the estate in plaintiff's despite. No doubt he himself neither gained anything nor lost much. Had there been no adoption a moiety of the reversion would have fallen to his share; by the adoption a moiety went to one of his sons; but, and this I consider to have been the motive underlying his consent, after the adoption nothing went to the plaintiff.

I infer collusion from the fact that he never informed Krishnaswami Chetty or indeed any one else of the proposed alienation.

No doubt if the consent of a substantial majority of the agnates nearest in relationship had been obtained, this Court need not trouble about the motives underlying the adoption. But such consent has not been obtained, and the refusal of consent is on valid ground. In such circumstances the adoption must be held to be void.

Considering that adoption is only a method by which a married couple can have a child, it may seem incongruous that a Court of law should concern itself with the underlying motive, and question whether it was caprice or corruption. That incongruity however disappears when the other aspect of adoption is considered, namely a method by which the holder of a life-interest can interrupt the normal succession, and confer an absolute estate. Then the question of caprice or corruption becomes very relevant. So in the leading Madras case *The Collector of Madura* v. *Muthuramalinga Sethupathi*[6] the Judicial Committee assumes that the Court is seeking for relevant evidence of motive and observes that an inference of proper motive may be founded upon the consent of the sapindas. In Bombay, on the other hand, where what may be called the religious, as opposed to the secular, aspect has been given greater prominence, it has been ruled that the widow's motive is not a relevant consideration, *Ramchandra* v. *Mulgi Nanabhai*.[3] Obviously such a ruling could never have been laid down if *The Collector of Madura* v. *Muthuramalinga Sethupathi*[6] was an authority in Bombay, a point which was clearly apprehended by the learned Judges who start on the assumption that *The Collector of Madura* v. *Muthuramalinga Sethupathi*[6] can be distinguished as not referring to the presidency of Bombay: *cf.* p. 565. In Bombay the consent of sapindas is not necessary, and the motives of the widow are not relevant and in Madras this divergence from Bombay has by no means diminished in the course of time. It might be said that the sanction of sapindas referred to in *The Collector of Madura* v. *Muthuramalinga Sethupathi*[6] is merely evidentiary, and if for some reason that evidence failed (as in our case where the sapindas are equally divided) presumably the Court would have sought else-

3. (1898) I.L.R. 22 Bom. 558 (F.B.).
6. (1868) 12 M.I.A. 397.

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where for material on which to ground an inference regarding the widow's motive. But by 1876 in *Sri Raghunadha* v. *Sri Brozo Kishoro*[13] we find

"It is admitted on all hands that an authorization by some kinsman of the husband is required . . . It may be the duty of a Court of Justice administering the Hindu Law to consider the religious duty of adopting a son as the essential foundation of the law of adoption and the effect of an adoption upon the devolution of property as a mere legal consequence" (what I have named the religious as opposed to the secular aspect). But it is impossible not to see that there are grave social objections to making the succession of property . . . dependent on the caprice of a woman . . . It seems therefore to be the duty of the Courts to keep the power strictly within the limits which law has assigned to it (the secular aspect).

Then in *Veera Basavaraju* v. *Balasurya Prasada Rao*[5] it is observed at page 272 :

"Division does not affect (the widow's) personal dependence or give her an independent status to alter by her own authority the succession to the estate. (The father's) authorization is therefore essentially requisite to the validity of an adoption by her to her husband. If there is no father the divided brothers take his place. They also have an interest in the protection of the inheritance."

In fact the sapindas' sanction which at first seemed no more than evidentiary is now regarded as requisite. Sapindas do not merely affirm the conduct of the widow; they pronounce a decision in their own right as persons having an interest in the protection of the inheritance. And in this view of the law if no such decision has been pronounced owing to an equal division between the sapindas, there can be no adoption and there is no need for the Court to go further and inquire itself into the widow's motive. While if the only view of the law was that to be obtained from *The Collector of Madura* v. *Muthuramalinga Sethupathi*,[6] presumably the Court itself in the absence of evidentiary sanction would consider the widow's motive. But by no view of law in Madras can it be said that the widow's motive is entirely irrelevant, either as guiding the sapindas or, in their absence, as guiding the Court.

I may observe that in my opinion the sapinda does not function as the protector of the adoptee but as the protector of the inheritance, taking a longer view than one confined to the personal advantage of a single individual. So I see nothing paradoxical in the plaintiff's objecting to the bargain while he equally objected to the boy who had been chosen. No doubt the bargain injured the immediate adoptee, but it also injured the inheritance for all time: *cf.* judgment of Venkatasubba Rao, J., page 32.

This insistence upon the secular aspect has led to a suggestion that this Court should hesitate to pronounce as void an adoption

5. (1918) L.R. 45 I.A. 265: I.L.R. 41 Mad. 998: 36 M.L.J. 40 (P.C.).
6 (1868) 12 M.I.A. 397.
13. (1876) L.R. 3 I.A. 154 at 192: I.L.R. 1 Mad. 69 (P.C.).

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which according to their religion is essential for the future happiness of the adoptive parents; and from this point of view presumably plaintiff was asked in cross-examination whether he did not believe in the efficacy of Hindu ceremonies. But of course that is a region into which the Courts of law do not intrude. We decide that the adoption is one which cannot be upheld by the law of British India, and is ineffective wherever our writ may run. But a pious Hindu may hold, nevertheless, that according to the precepts of his religion the adoption is valid. He may hold that the proper person was selected and the proper ceremony performed, and regard "the effect of (such) an adoption upon the devolution of property as a mere legal consequence." We on the other hand "must keep the power strictly within the limits which the law has assigned to it," that is to say, the law as embodied by the reports of the Judicial Committee which govern our decision. But these reports are not the authority which will guide a pious Hindu or his religious advisers; for no one pretends that they have attained the character of sacred books. It is quite conceivable that a man whom the judgment of this Court has deprived of all status as an adopted son may nevertheless consider himself such, and may be so considered by his co-religionists. Exactly the same situation may be seen in Europe where a woman who in the eyes of the State and the secular law is duly married, is in the eyes of her church and her co-religionists not married at all.

If we held otherwise, and in our opinion those people who faithfully believe that the avoidance of an adoption consigns the adopting parents to perdition, must also believe that our act of avoidance has this dire effect, we might feel constrained to take some such course as that adumbrated in *Bhasba Rabidat Singh* v. *Indar Kunwar*[2] and merely avoid the condition while affirming the adoption. But I see no reason for taking a course which, in my opinion, would not follow the law of the Madras decisions. If a sapinda has for good reason refused his consent, it is not for the Courts to go behind his action, by introducing principles of equity which in other circumstances may prevail in England. And, of course, supposing an adoptee to be a man of his word, the result of our decision would be to reaffirm terms which the sapindas had justifiably found to be corrupt; and the sapindas' function as protectors of the inheritance would be gone. The adoptive mother as a device for turning her life-estate into an absolute estate makes a corrupt bargain with a future adoptee. The sapindas decline their assent holding the motive for the adoption to be corrupt. This Court nevertheless affirms the adoption, with the forlorn hope that if it avoid the terms the adoptee may be trusted not to renew the contract by virtue of which alone he gained his position as adopted son.

2. (1889) L.R. 16 I.A. 53. I.L.R. 16 C. 556 at 564 (P.C.).

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The recent decision of the Judicial Committee in *Krishnamoorthi Aiyar* v. *Krishnamoorthi Aiyar*[1] does not in my opinion help the defendants. Besides discussing the validity of a pre-adoption contract by the natural father, a point not now in question, this case is authority for the proposition which surely cannot be described as novel that all bargains between the adopting widow and the adoptee are not necessarily corrupt. Having regard to the particular circumstances of each bargain which may be called in question our Courts will have to decide whether the bargain was or was not so corrupt or capricious as to justify the sapindas in refusing or according their consent. Presumably a wide latitude will be allowed to the judicial discretion of a sapinda in such cases, but nice questions on the border line between pure and corrupt motive may possibly arise in future. No such question, however, arises in this case because the Judicial Committee has indicated one form of contract which is not permissible (and which therefore would justify a sapinda's refusal of consent), *i.e.*, terms which give the widow property absolutely, or give the property to strangers . . . Such arrangements are against the radical view of the Hindu Law, p. 528.

As regards the point taken in the opening paragraphs of the judgment of Krishnan, J., (page 3), whether certain evidence is admissible, I agree with the finding of the learned Judge for the reasons therein set forth. Mr. Grant conceded in the light of that decision that he would not further press the question of the plaintiff's birth, at least in this Court, though reserving his right to raise the whole matter, if necessary, on appeal should the Appellate Court take a different view upon the point of law. Therefore on the question of his birth I find for the plaintiff.

For the above reasons I would dismiss this appeal.

N.S. *Letters Patent Appeal dismissed.*

[END OF VOLUME LV.]

1 (1927) L.R. 54 I.A. 248: I.L.R. 50 Mad. 508: 53 M.L.J. 57 (P.C.).